IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1378 OF 2004

M/s Aswathi Inds Ltd .. Plaintiff

versus

DNH Metcraft Pvt.Ltd .. Defendant

...

Mr. N.B.Jadhav for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 8th February, 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant. Learned counsel for the plaintiff has filed on record the affidavit of service sworn in by Mr.Gulhane clerk in the office of Sheriff of Mumbai on 26th July, 2004 proving service of the writ of summons on the defendant. Despite service of writ of summons the defendant has not filed an appearance in Court. Hence, under sub-rule 3 of Rule 2 of Order XXXVII of the Code of Civil Procedure the defendant is deemed to have admitted the allegations

made in the plaint.

2. The plaintiff has filed on record the original documents along with a list. The documents are taken on record and collectively marked Exhibit A. The defendant placed an order on the plaintiff by letter dated 18th May, 2000 for contract of refurbishing of torpeds cadel car. The plaintiff carried out the work from time to time and sent bills for the total value of Rs.17,50,000/- which was the agreed price for the contract. The defendant made part payment to the tune of Rs.7,46,690/- (including TDS) leaving a balance of Rs.10,03,310/-. Despite demand the defendant failed and neglected to make the payment. The plaintiff has therefore filed this suit for recovery of the money due. The defendant sent to the plaintiff a statement of account confirmation in which the defendant has admitted that the aforesaid amount of Rs.10,03,310/- is due and payable by it. The original statement of confirmation of account sent by the defendant to the plaintiff is filed on record. The plaintiff has also filed on record copy of the bill which was issued to him which shows the total amount payable to the plaintiff was Rs.17,50,000/-. In view of the documents filed on record and in view of the fact that

the defendant has not filed an appearance the plaintiff is entitled to a decree under sub-rule 3 of rule 2 of Order XXXVII of the Code of Civil Procedure. Hence suit is decreed as folows :

> " The defendant shall pay Rs.10,03,310/- to the plaintiff together with interest at 12 % p.a. from the date of suit till payment and all costs of the suit. Issue court fee refund certificate as per rules.

D.G.KARNIK, J